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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,698	12/05/2001	Snezna Rogelj	UNME-0115-1	4017

7590 04/23/2004

COLEMAN SUDOL SAPONE, P.C.  
714 COLORADO AVE  
BRIDGEPORT, CT 06605-1601

EXAMINER

LUKTON, DAVID

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE  
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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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10/002698

EXAMINER
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ART UNIT	PAPER NUMBER
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2004-0401

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Please see the attached communication regarding applicants' response to the restriction requirement.

Applicants' election of Group 3 with traverse (claims 14-15) is acknowledged. However, applicants have failed to elect a specie, as required by the previous Office action.

Applicants have argued that the examiner should withdraw the restriction and examine all claims. As indicated in the previous Office action, in the event that applicants had elected Group 1, and claims therein found allowable, the corresponding method-of-use claims would have been rejoined therewith. Accordingly, by electing Group 3, rather than Group 1, applicants have voluntarily relinquished the opportunity to have all claims examined. Given that applicants have voluntarily relinquished the opportunity to have all claims examined, applicants have provided a justification for the restriction.

Applicants have cited *In re Harnisch* (CCPA, 1980). However, Harnisch does not prohibit election of species, nor does *Ex parte Brouard*. Unity of invention may be found to be lacking if the claimed invention does not "define a contribution" over the prior art. The examiner asserts (without evidence at this point) that at least one of the compounds of claim 9 has been disclosed, or is rendered obvious by the prior art.

There is no MPEP citation or court decision which prohibits election of species. Election of a specific, fully defined molecule is required. The time period for response (one month) is reset pursuant to this Office action. However, failure to elect a specie in response to this Office action will result in abandonment of the application.

Serial No. 10/002,698  
Art Unit 1653

-3-



Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached at 571-272-0951. The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

DAVID LUKTON  
PATENT EXAMINER  
GROUP 1809